

## PREMERA/NEW PREMERA TRANSFER OF ASSETS AGREEMENT

THIS TRANSFER OF ASSETS AGREEMENT (this “**Agreement**”) is entered into as of [\_\_\_\_], 200[\_\_\_\_] (the “**Closing Date**”) by and between PREMERA, a Washington nonprofit corporation (“**PREMERA**”), and [New PREMERA Corp.], a Washington corporation (“**New PREMERA**”).

### RECITALS

WHEREAS, as a result of the planned dissolution of PREMERA, the [Washington Foundation Shareholder], a Washington nonprofit corporation ~~(the “Foundation Shareholder”~~ and Alaska Health Foundation, an Alaska nonprofit corporation (collectively, the “Foundations”), will acquire PREMERA’s assets, which ~~include~~ consist of [\_\_\_\_] shares of New PREMERA’s no par value common stock (the “**Common Stock**”), representing 100% of the issued and outstanding shares of New PREMERA’s Common Stock;

WHEREAS, New PREMERA became a licensee of the Blue Cross and Blue Shield Association (the “**BCBSA**”) upon consummation of the series of transactions contemplated by the Plan of Conversion (the “**Plan of Conversion**”) attached as Exhibit A-4 to the Statement Regarding the Acquisition of Control of a Domestic Health Carrier and a Domestic Insurer which was filed by PREMERA on behalf of New PREMERA with the Insurance Commissioner of the State of Washington, the Attorney General of the State of Washington, the Alaska Division of Insurance and the Oregon Insurance Division on September 17, 2002, as amended February 5, 2004, thereby enabling New PREMERA to use the “Blue Cross” and “Blue Shield” names and related rights; ~~and~~

WHEREAS, following the transfer of the assets of Premera Blue Cross to New Premera Blue Cross pursuant to the terms of Premera Blue Cross/New Premera Blue Cross Transfer of Assets Agreement, New Premera Blue Cross transferred all of the issued and outstanding shares of Premera Blue Cross Blue Shield of Alaska Corp. to PREMERA pursuant to a plan of distribution within the provisions of Section 355 of the Code and Exhibit B attached hereto; and

WHEREAS, the execution and delivery of this Agreement is pursuant to a plan of reorganization within the meaning of Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended (the “**Code**”), pursuant to which PREMERA transfers all of its assets and liabilities to New PREMERA in exchange for all of the Common Stock, and PREMERA immediately liquidates, distributing New PREMERA stock to the Foundation Shareholder, all as approved by the Foundation Shareholder as set forth on **Exhibit A** attached hereto.

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements contained herein, PREMERA and New PREMERA hereby agree as follows:

## AGREEMENT

### Section 1. TRANSFER OF ASSETS

Subject to the terms and conditions of this Agreement, as of the Closing Date, PREMERA shall convey, transfer, assign and deliver to New PREMERA, and New PREMERA shall acquire and accept from PREMERA, without reservation, all of the assets of PREMERA, including all of the stock of [New Premera Blue Cross Corp.], a Washington corporation (“**New Premera Blue Cross**”), all of the stock of Premera Blue Cross Blue Shield of Alaska, an Alaska corporation (“**Premera of Alaska**”), and all of PREMERA’s other tangible and intangible assets owned, licensed or otherwise used including, without limitation, the following (together, the “**Assets**”):

(a) any and all contracts to which PREMERA is a party at the Closing Date, including without limitation, all customer contracts, provider contracts, licenses (including any and all rights under PREMERA’s license from the Blue Cross and Blue Shield Association to use the “Blue Cross” and “Blue Shield” names, marks and related rights, to the extent transferable), employment agreements, leases, bank and investment contracts, insurance contracts, sponsorship of all employee benefit plans (together, the “**Contracts**”) and all right to enforce any limitations, restrictions and obligations with respect to the Contracts;

(b) any and all equipment, machinery, tools, appliances, vehicles, furniture, fixtures, parts, tangible real or personal property, inventory or supplies and all warranties and guarantees, if any, express or implied, in connection with the foregoing, to the extent assignable;

(c) any and all cash on hand and checks received pending collection as of the Closing Date and all cash equivalents including, without limitation, all bank deposits, investment account deposits, brokerage account deposits, commercial paper, certificates of deposits, and securities, whether or not marketable;

(d) all right, title and interest to receive the payment of money or other consideration including, without limitation, (i) all accounts receivable; (ii) all rights to receive payments arising under the Contracts; (iii) chattel paper and promissory notes; (iv) all general intangibles evidencing a right to receive payment; (v) all documents of title, receipts, draft checks, acceptances and any and all notes or other negotiable and nonnegotiable instruments, documents, bills of exchange, securities, deposits, certificates of deposit, or other writings evidencing or comprising a monetary obligation;

(e) all intangible assets, rights and claims of every kind and nature used, owned or held, including without limitation, all trademarks, service marks, patents,

patents pending, copyrights, tradenames, and all applications for or registrations of any of the foregoing, marketing or proprietary designs, brochures, advertisements, concepts, literature, business information, rights against other persons in respect of any of the foregoing, rights to enforce confidentiality obligations, and any other proprietary properties, including without limitation, the interest in its websites;

(f) an original or a copy of all books, files, records, lists and proprietary information that relate to PREMERA, provided that PREMERA may keep a copy of any information that PREMERA is required by law to keep in its possession;

(g) prepaid expenses, prepaid deposits, prepaid insurance premiums and expenses, credits, retainers, and security deposits;

(h) the rights, subject to the obligations accruing for periods from and after the Closing Date, under all leases for real and personal property;

(i) the management information system components and related software and all other software owned or used;

(j) all nondisclosure or confidentiality agreements, together with any warranties made by any employees or former employees and any assignments of intellectual property rights as included in such agreements;

(k) all credits or carryovers with respect to taxes; and

(l) the business of PREMERA as a going concern, including goodwill and all other assets, tangible or intangible, real or personal, owned, used or held by PREMERA.

## **Section 2. ASSUMPTION OF LIABILITIES**

In connection with the transfer, delivery and assignment of the Assets, upon execution and delivery of this Agreement, New PREMERA will assume, pay, perform and discharge when due all of the obligations of PREMERA as the same shall exist on the Closing Date, including without limitation, the following (together, the “**Assumed Liabilities**”):

(a) PREMERA’s performance obligations under the Contracts and capital and operating leases arising and to be performed on or after the Closing Date;

(b) all obligations of PREMERA with respect to accounts payable and accruals of PREMERA;

(c) any employee benefits or liabilities to or in respect of employees or former employees of PREMERA, including without limitation, salaries, wages, and other compensation due to employees of PREMERA;

(d) any liabilities arising under or in respect of any profit sharing, bonus, pension, welfare, or other employee benefit plan maintained by PREMERA or to which PREMERA contributed;

(e) all obligations of PREMERA in respect of United States taxes, including without limitation, employee withholdings and all such taxes owing in respect of PREMERA's activities and operations prior to and on the Closing Date;

(f) PREMERA's Washington and other state and local tax obligations, including without limitation, all taxes owing in respect of PREMERA's operations for periods prior to or on the Closing Date, and all unemployment insurance, industrial insurance, premiums, and all other such payments or deposits owing or to be made for periods prior to or on the Closing Date;

(g) any and all contingent or unknown liabilities; and

(h) any other liabilities and obligations of PREMERA associated with the business of PREMERA not expressly set forth.

### **Section 3. EXCHANGE**

In consideration for the Assets, New PREMERA shall issue to PREMERA [ ] shares of its Common Stock, representing 100% of the issued and outstanding shares of Common Stock of New PREMERA, and assume, as of the Effective Time (as defined below), the Assumed Liabilities set forth in Section 2 above.

### **Section 4. CLOSING DATE**

The transfer provided for herein shall be consummated on the Closing Date at such place and at such time (the "Effective Time") as the parties hereto may agree. All Assets shall be deemed transferred as of the Effective Time and all documents delivered on the Closing Date shall reflect the transfers occurring at the Effective Time.

### **Section 5. MISCELLANEOUS**

**5.1 Further Acts.** Each party hereto agrees that, as requested by the other party after the Closing Date, it will do all such further acts as may be required to effectuate the consolidation contemplated hereby.

**5.2 Expenses.** On and after the Closing Date, New PREMERA shall bear the expenses of PREMERA for a reasonable period, including without limitation, PREMERA's expenses of accounting and auditing and tax return preparation.

**5.3 Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to

Washington's conflict of law or choice of law rules. The parties irrevocably submit to the exclusive jurisdiction of the state and federal courts situated in King County, Washington in any proceeding relating to this Agreement, and agree that any process or summons in any such action may be served by providing to the party a copy thereof in accordance with the notice provisions of this Agreement.

**5.4 Fair Construction.** This Agreement is the product of negotiation and shall be deemed to have been drafted by all of the parties. It shall be construed in accordance with the fair meaning of its terms and its language shall not be strictly construed against, nor shall ambiguities be resolved against, any particular party.

**5.5 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**5.6 Descriptive Headings.** The descriptive headings used herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

**5.7 Severability.** In the event that any one or more of the provisions contained herein, or the application thereof in any circumstances, shall be held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions contained herein shall not be in any way impaired thereby, it being intended that all remaining provisions contained herein shall not be in any way impaired thereby.

*(the remainder of this page intentionally left blank)*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**PREMERA**, a Washington nonprofit  
miscellaneous corporation

\_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**NEW PREMERA CORP.**, a Washington  
corporation

\_\_\_\_\_

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT A**

**ACKNOWLEDGEMENT AND CONSENT OF  
FOUNDATION SHAREHOLDERS**

[Washington Foundation Shareholder], a Washington nonprofit corporation formed under RCW Chapter 24.03 and Alaska Health Foundation, an Alaska nonprofit corporation formed under the laws of the State of Alaska, (collectively, the "Foundations"), the sole voting members of PREMERA, hereby acknowledge and confirm that on the dissolution of PREMERA and pursuant to the PREMERA Plan of Distribution, the PREMERA Plan of Reorganization and the Articles of Dissolution:

1. The Foundations take such transferred assets consisting of their respective interests in the shares of New Premera Common Stock, subject to the limitations applicable to dissolution distributions governed by RCW 24.03.225 and the Transfer, Grant and Loan Agreement; and

2. Prior to any subsequent transfer of the proceeds of sale of such New Premera Common Stock, each Foundation will obtain from their respective transferees a similar acknowledgment and confirmation of such restrictions on the use and application of such proceeds.

[WASHINGTON FOUNDATION  
SHAREHOLDER]

By \_\_\_\_\_  
Its \_\_\_\_\_

ALASKA HEALTH FOUNDATION

By \_\_\_\_\_  
Its \_\_\_\_\_

**EXHIBIT B**

**TRANSFER OF PREMERA OF ALASKA SHARES**

THIS TRANSFER OF PREMERA OF ALASKA SHARES AGREEMENT (the “Agreement”) is entered into as of \_\_\_\_\_, 20[ ] (the “Closing Date”) by and between PREMERA, a Washington nonprofit corporation (“PREMERA”) and [New Premera Blue Cross Corp.], a Washington corporation (“New PBC”).

WHEREAS, Premera Blue Cross, a Washington nonprofit corporation (“Premera Blue Cross”) transferred all of the assets and liabilities related to its Alaska business to Premera Blue Cross Blue Shield of Alaska (“Premera of Alaska”) in exchange for all of the stock of Premera of Alaska pursuant to the Premera Blue Cross/Premera of Alaska Transfer of Assets Agreement;

WHEREAS, Premera Blue Cross transferred all its assets including the shares of stock of Premera of Alaska to New PBC prior to the dissolution of Premera Blue Cross and transfer of the New PBC shares to PREMERA; and

WHEREAS, New PBC wishes to transfer the shares of stock of Premera of Alaska to PREMERA.

NOW THEREFORE, in consideration of the promises and the mutual representations and agreements, PREMERA and New PBC hereby agree as follows:

**AGREEMENT**

**Section 1. Transfer of Shares**

Subject to the terms of this Agreement, as of the Closing Date and in the order specified in the Recitals New PBC shall convey, transfer and assign and deliver to PREMERA 100% of the issued and outstanding shares of Premera of Alaska and PREMERA shall acquire and accept such shares.

PGE Draft of August \_\_, 2002 \_\_\_\_\_

~~ATTORNEY WORK PRODUCT  
PRIVILEGED AND CONFIDENTIAL~~

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**PREMERA**, a Washington nonprofit  
miscellaneous corporation

\_\_\_\_\_

Print Name:

Its:

**NEW PREMERA BLUE CROSS CORP.**,  
a Washington corporation

\_\_\_\_\_

Print Name:

Its:

